

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
DES MOINES DIVISION**

DON KAHAN MOTORS, INC., Plaintiff, vs. GABUS AUTOMOTIVE DISTRIBUTORS, INC.; DES MOINES MOTORS, INC.; CHARLES GABUS MOTORS, INC.; GENE GABUS, an Individual, and JERRY LANDE, an Individual, Defendants.	CASE NO. <u>4:13-CV-248</u> COMPLAINT AND JURY DEMAND
---	---

COMES NOW Plaintiff, who states:

STATEMENT OF JURISDICTION

Plaintiff is a corporation incorporated under the laws of the state of Delaware with its principal place of business in Missouri. Defendants Gabus Automotive Distributors, Inc., Des Moines Motors, Inc., and Charles Gabus Motors, Inc. are corporations incorporated under the laws of the state of Iowa with their principal place of business in Iowa, Polk County. Defendants Gene Gabus and Jerry Lande are citizens of the state of Iowa, County of Polk. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

GENERAL ALLEGATIONS

1. Plaintiff, at all times material, has operated an automobile dealership in Lees Summit, Missouri.
2. The named corporate Defendants are engaged in the business of selling automobiles and other motor vehicles in Des Moines, Iowa, and upon information and belief are owned, operated and controlled by Defendant Gene Gabus.

3. Defendants promoted and sold a Dealer/Licensing Agreement to Plaintiff on or about June, 2010. As part of that agreement, Defendants were to provide vehicles, parts and accessories and service concerning electric vehicles to be produced by Envision Motor Company, Inc.

4. Defendants also promoted and sold a Dealer Agreement and Dealer Sales & Service Agreement to Plaintiff. As part of that agreement, Defendants were to provide vehicles, parts, accessories and service concerning Gas & Electric Noble and SCEO SUV's to be manufactured in China by Shuanghuan Auto.

5. On June 23, 2010, Plaintiff paid Defendants \$250,000 for the rights to exclusively distribute the electric cars in the Kansas City metropolitan area in Missouri. On the same date, Plaintiff paid Defendants \$100,000 for the exclusive rights to distribute the Gas & Electric Noble and SCEO SUV's in the Kansas City metropolitan area in Missouri. The checks making these payments were payable to Gabus Automotive Distributors.

6. On September 14, 2010, Defendants solicited Plaintiff to pay \$100,000 to be the exclusive distributors for the electric cars and the Gas & Electric Noble and SCEO SUV's in the Kansas City metropolitan area in Kansas. Again, the payment was made payable to Gabus Automotive Distributors.

7. Despite numerous promises by Defendants to provide vehicles for sale pursuant to their representations and demands by Plaintiff for vehicles, Defendants have never provided any of the vehicles, parts and support promised by them. Furthermore, Defendants have failed and refused to refund the \$450,000 paid to them by Plaintiff.

COUNT I

FRAUDULENT MISREPRESENTATION

8. Plaintiff re-states Paragraphs 1-7.

9. The representations made by Defendants regarding the provision of vehicles, parts and service were false.

11. Defendants' representations were material.

12. Defendants knew the representations were false.

13. Defendants intended to deceive Plaintiff.

14. Plaintiff acted in reliance on the truth of the representations and was justified in relying on the representations.

15. The representations were a cause of the Plaintiff's damage.

16. Plaintiff has been damaged in the amount of \$450,000 plus additional incidental and consequential damages.

WHEREFORE, Plaintiff prays for judgment against Defendants for its damages, all in excess of the jurisdictional minimums in this diversity of citizenship action plus interest and costs.

COUNT II

NEGLIGENT MISREPRESENTATIONS

17. Plaintiff re-states paragraphs 1-16.

18. The Defendants in 2010, and thereafter, negligently supplied the information about the provision of electric vehicles and Gas & Electric Noble Vehicles to Plaintiff, which was false.

19. The Defendants had a financial interest in supplying the information.

20. The Defendants intended to supply the information for the benefit and guidance of Plaintiff.

21. The Defendants intended the information to influence the transaction for which the information was supplied.

22. The Plaintiff acted in reliance on the truth of the information supplied and was justified in relying on the information.

23. The negligently supplied information was a cause of Plaintiff's damage.

24. Plaintiff has been damaged in the amount of \$450,000 plus additional incidental and consequential damages.

COUNT III

UNJUST ENRICHMENT

25. Plaintiff re-states Paragraph 1-24.

26. Defendants have been unjustly enriched in the amount of \$450,000.

WHEREFORE, Plaintiff prays for judgment against Defendants in the amount of \$450,000 plus interest and costs and for such other and further relief as the court deems just.

COUNT IV

CONVERSION

27. Plaintiff re-states paragraphs 1-26.

28. Defendants wrongfully converted Plaintiff's \$450,000 to their own use.

Defendants have refused to refund Plaintiff's money despite several demands to do so.

WHEREFORE, Plaintiff prays for judgment against Defendants in the amount of \$450,000 plus interest and costs and for such other and further relief as the court deems just.

JURY DEMAND

Plaintiff demands a trial by jury.

LANE & WATERMAN LLP

By 
Rand S. Wonio - ICIS PIN #AT0008560

LANE & WATERMAN LLP
220 N. Main St., Ste. 600
Davenport, IA 52801-1987
Phone: (563) 324-3246
Facsimile: (563) 324-1616
E-Mail: rwonio@l-wlaw.com

ATTORNEYS FOR PLAINTIFF